IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.2 OF 2006
WITH
CIVIL APPLICATION NO.52 OF 2006

Shri Dilip Ramchandra Salunkhe, Age 42, Occupation Part Time Service, 1, Krushnai Apartment, S. No.29/1, Opp. Corporation Bank, Karve Road, Kothrud, Pune - 411 029. ... Appellant

Versus

1. Kumari Apurva Dilip Salunkhe Age 14 years, Occ. Education.
2. Kumar Shivraj Dilip Salunkhe Age 2½ years, Occ. Education.
3. Smt. Vidya Dilip Salunkhe, Age 35 years, Occ. Service, all residing at C/o. Shri Vishvas B. Jachak, 314, Kiran Society, Sahakar Nagar No.1, Pune - 9. ... Respondents

Mr. S.V. Pitre for the appellant.

Ms. Seema Sarnaik for the respondents.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 1ST AUGUST, 2006.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The appellant is the husband. Respondent 3 is his wife. Admittedly, the appellant and respondent 3 were married at Pune on 24/6/1988. Respondent 1 is their daughter and respondent 2 is their son.

2. The appellant is the respondent in Petition C-No.2 of 2004 filed under sections 18 and 20 of the Hindu Adoptions & Maintenance Act (for short, “the said Act”) by the respondents in the Family Court No.3 at Pune. The present appeal is filed challenging order dated 5/2/2005 passed by the Family Court No.3 at Pune in the said petition. By the impugned order, the petition is partly allowed. The appellant was directed to pay Rs.3,000/- per month to respondent 1, Rs.2,000/- per month to respondent 2 and Rs.15,000/- per month to respondent 3 towards maintenance under sections 18 and 20 of the said Act from the day of presentation of the petition i.e. since 29/12/2003. There is no dispute about the fact that the impugned judgment and order is ex-parte.

3. In the title of the petition filed in the Family Court at Pune by the respondents, the appellant is described as resident of two places. One is at 1, Krushnai Appartment, S.No.29/1, Opp. Corporation Bank, Karve Road, Kothrud, Pune - 411 029 and the other is at 2, Pratibha Nagar, Dhankawadi, Pune - 411 043. The petition came to be filed in the Family Court on 29/12/2003. It appears that the appellant, who is serving in merchant navy, was on the ship from 10/3/2004 to 22/10/2004. There is no dispute about the fact that there is no actual service of the notice on the appellant and there was no service by affixing at his address at 2, Pratibha Nagar, Dhankawadi, Pune - 411 043. It appears to us from the record of the case that occasionally, the appellant also resides at 2, Pratibha Nagar, Dhankawadi, Pune - 411 043.

4. We have seen the bailiff's report dated 23/3/2004. It appears from this report that the bailiff had visited the residence of the appellant at 1, Krushnai Appartment, S.No.29/1, Opp. Corporation Bank, Karve Road, Kothrud, Pune - 411 029 on 25/2/2004. The report states that one Ms. Nilima Thambe met him at the said address. When he made enquiry with Ms. Nilima Thambe, she told him that she had taken the said premises on rental basis from the appellant and that the appellant was not staying at the said premises. An endorsement to that effect was made on the notice. In the circumstances, the bailiff did not serve the notice. It appears that inspite of this, substituted service was directed to be effected again at the same address at 1, Krushnai Appartment, S.No.29/1, Opp. Corporation Bank, Karve Road, Kothrud, Pune - 411 029. This is evident from the bailiff's report (Ex-7) dated 19/4/2004. This report indicates that the bailiff visited the same place again and found the house locked. The bailiff's report states that as per the court's order, the notice was served by affixing. Treating this service as good service, the impugned ex-parte order has been passed.

5. Having regard to the above facts, we are of the opinion that there is no proper service of the notice on the appellant. There is sufficient indication in record that the appellant has been occasionally staying at 2, Pratibha Nagar, Dhankawadi, Pune - 411 043. Admittedly, no notice was served on the applicant's house at 2, Pratibha Nagar, Dhankawadi, Pune - 411 043. Therefore, we are of the opinion that the interest of justice would be served if without going into the merits of the case, the matter is remanded to the Family

Court No.3 at Pune for hearing it afresh. We are informed that the appellant has not been regularly paying the maintenance. Ms. Sarnaik made a grievance that the appellant is in arrears of maintenance. We are of the opinion that the appellant should pay the arrears of maintenance at the rate determined by the Family Court by the impugned order. Needless to say that the Family Court, after the evidence is adduced by the parties, will be free to vary the quantum of the maintenance and pass appropriate orders. Hence, the following order :

O R D E R

6. The impugned judgment and order dated 5/2/2005 passed by the Family Court No.3 at Pune is quashed and set aside. The matter is remanded to the Family Court No.3 at Pune. The Family Court No.3 at Pune shall hear the matter afresh after giving opportunity to the parties to adduce evidence. The Family Court No.3 will permit the parties to lead their evidence. The parties will be free to file additional pleadings if required. We make it clear that we have not expressed any opinion on the merits of the case. All contentions of both sides are kept open.

7. The appellant shall clear all arrears of maintenance as per the impugned order and the appellant shall continue to pay the maintenance till the Family Court disposes of the instant petition. The Family Court shall decide the instant petition as expeditiously as possible and at any rate within

a period of six months from the date of receipt of this order by it.

8. The parties shall appear before the Family Court No.3 at Pune on 16/8/2006. We direct the appellant to pay a sum of Rs.50,000/- to the respondents towards educational expenses of the children within three weeks from today out of the arrears of maintenance.

9. The family court appeal as well as the civil application are disposed of.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]